IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 87 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAFARKHAN JARAMANKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SAMIR DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Rule. Mr.Samir Dave waives service of Rule on behalf of respondents.

#. Heard the learned counsel for the parties.

#. It is not in dispute that the petitioner is a convict and sentenced to suffer rigorous imprisonment for ten years by learned Sessions Judge, Ahmedabad, under Section 20B of the N.D.P.S.Act vide judgment dated 11.1.90 in Sessions Case No.136/90. Against this judgment, the petitioner preferred Criminal appeal before the Hon'ble Supreme Court of India which was also dismissed.

#. In addition to substantive sentence, the learned trial court has also ordered to pay a fine of Rs.1 lac and in default of payment of fine, naturally the petitioner has to undergo sentence in lieu of that as ordered by the court. The petitioner came up with the case that he has been in jail for more than ten years including as undertrial prisoner. From this fact, what it is to be conveyed that the petitioner has already undergone substantive sentence and as a fine of Rs.1 lac has not been paid, he has to undergo sentence in lieu thereof for the period as ordered by the trial court. He is praying for his release on parole for fifteen days on his personal bond to arrange Rs.1 lac to be deposited by him towards fine imposed. The petitioner, in the special criminal application, made prayer to release him on parole or temporary leave for fifteen days.

#. There is no provision under the Prisons Act or IPC or some other Act where a prisoner can be released temporarily. In the Bombay Furlough and Parole Rules, 1959, there is no provision for release of prisoner on temporary basis. Two categories of temporary release of the prisoner are provided under the Rules, i.e. release on furlough or release on parole leave. Reference here may have to Rules 3 and 18 of the Rules aforesaid. So the prayer made by petitioner for temporary release does not fall under any of the statute or Rules framed thereunder or under any of the Standing Orders or resolution of the Government and which cannot be granted by this court. Under Article 226 of the Constitution, this court can grant relief which are legally permissible to the prisoners.

#. So far as parole leave is concerned this cannot be granted to the petitioner in this petition. Reference here may have again to provisions as contained in Rule 18 of the Rules. The authorities who are competent to sanction parole to the prisoners are enumerated in that Rule and the petitioner first has to approach that authority. From the Writ Petition, I do not find anything that before filing the present petition, the petitioner approached to the authority concerned for this relief of grant of parole leave to him. When the

petitioner has efficacious alternative remedy available with him in the matter, it is difficult to appreciate the approach directly to this court by filing petition under Article 226 of the Constitution. As the petitioner has efficacious alternative remedy available in the matter, I do not consider it to be advisable to give any finding on merits of the claim of the petitioner for parole leave. Only on this ground, this petition is dismissed. Rule discharged. No order as to costs.

.....

(sunil)